

1 HONORABLE RONALD B. LEIGHTON
2
3
4
5
6
7
8

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 EDWARD JAMES WILKINS,

10 v. Petitioner,

11 JEFFREY A UTTECHT,

12 Respondent.

CASE NO. C19-6122RBL

ORDER

14
15 THIS MATTER is before the Court on Magistrate Judge Creatura's Report and
16 Recommendation [Dkt. # 16], recommending denial of Petitioner §2254 habeas petition, and
17 dismissal with prejudice. Petitioner has not objected, but he has filed a "Motion for Vicarious
18 Exhaustion of State Remedies" [Dkt. # 17]. Wilkins argues (as have several petitioners recently)
19 that in *Fischer v. State of Washington*, Cause No. 20-cv-0051TSZ, Judge Zilly rejected a portion
20 of a Magistrate Judge's R & R that denied a habeas petition on exhaustion grounds, because
21 Fischer *had* exhausted his remedies, even though on his petition's cover sheet he "checked a
22 box" stating that he had not. *See* Dkt. # 5 in that case. Wilkins seems to suggest that this

1 particularized ruling means that state court exhaustion is no longer a requirement of a § 2254
2 petition. As the state argues, he is wrong. [Dkt. # 18].

3 (1) The Report and Recommendation is **ADOPTED**;
4 (2) Petitioner Wilkins' §2254 habeas petition is **DISMISSED** with prejudice;
5 (3) Wilkins' motion for summary judgment [Dkt. # 15] is **DENIED**;
6 (4) Wilkins' Motion for Vicarious Exhaustion of State Remedies is **DENIED**;
7 (3) For the reasons articulated in the R&R, the Court will **NOT** issue a Certificate of
8 Appealability; and
9 (4) Petitioner's *in forma pauperis* status is **REVOKE**D in the event of an appeal.

10 The clerk shall send copies of this Order to Wilkins, to Respondent's counsel, and to
11 Magistrate Judge Creatura.

12 IT IS SO ORDERED.

13 Dated this 23rd day of April, 2020.

14
15 
16 Ronald B. Leighton
17 United States District Judge